

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.250 OF 1988

Isak Mahamad Wagale, since)
deceased by his heirs)
1. Maryami Isak Wagle)
2. Rukiya Hasan Wagle)
3. Maimunna M.Kapadi)
4. Noorjehan Abdul Majid Wagle)
5. Fatima Isak Wagle)
6. Inayat Isak Wagle)
7. Banu Rafik Ahmed Sawant)
R.No.1 to 6 residign at Digani)
Tal. Sangameshwar, Ratnagiri)
R.No.7 residing at Kasaba,)
Tal. Sangameshwar, Ratnagiri.)..Appellants

Versus

1. Jainuddin Mohamad Yusuif)
Mulla)
2. Khatija Ahamad Mulla)

3. Amir Ahmad Mulla)
4. Mahamud Mahamad Isuf Mulla)
5. Ibrahim Ahmad Mulla)
6. Hasanmiya Ahmad Mulla)
- all residing at Jambhari)
- Tal. & Dist. Ratnagiri)..Respondents

Mr.S.M.Kazi for appellants

Mr.A.A.Bhore for respondents.

CORAM : P.V.KAKADE, J.
DATE : 10TH JUNE, 2005.

ORAL JUDGMENT :

1. The original appellant has preferred this appeal against the judgment and order passed by the learned District Judge, Ratnagiri on 1.3.1988 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Senior Division, Ratnagiri dated 12.10.1984 dismissing the suit for possession of the suit property.

2. The facts involved in this dispute are thus -

. Original suit was filed by one Jainuddin Mohamad Yusuf Mulla and others. It was averred by the plaintiffs that they and defendant nos.1, 2 and 3 were successors-in-title of one Mahamad. It was further alleged that the landed property, which was subject matter in the suit, bearing Survey No.21 Hissa No.21 to the extent of 2 gunthas of village Jambhri was owned by father of plaintiff no.1. The plaintiff nos.1 to 3 and defendant nos.2 to 4 had common interest in the suit properties, but said defendants were not present when the suit was filed so they were made formal parties to the suit. It was alleged that the land in question was owned by father of plaintiff no.1, who was father-in-law of the present plaintiff and father of defendants.2 and grand-father of plaintiff no.3, defendant nos.3 and 4. The said Mahamad Yusuf Babasaheb Mulla had purchased the suit property in the year 1939 under the registered sale deed. Even prior to the said sale deed the suit property was in possession and Vahiwat of said Mahamad Mulla. In the said suit property there was one building. After the death of Mahamad Mulla, the present plaintiffs and defendant Nos.2 to 4 have inherited the suit property. At present the said building is given

Grampanchayat No.279. The present suit is in respect of the said property along with its open space on its four sides is filed. The defendant No.1 is resident of Dingani in Tal. Sangameshwar. He does not own any property at Jambhari. He had come to Jambhari in order to start the grossary shop about 30 years prior to the suit and had taken the said suit house on rent at the rate of Rs.51/- per year and accordingly he was running the said shop in the said suit house. Later on for the convenience, he had constructed temporary Padavi in the said suit house and accordingly he was running the said business in the suit premises for many years. However, during the said period, behind the back of the plaintiffs and defendant nos.2 to 4, the defendant no.1 had managed to enter his name in the said land bearing Survey No.21, Hissa No.21. He also had managed to enter his name to the said Grampanchayat house taking advantage of the fact that he had constructed the said Padavi. As he had managed to enter his name as tenant, in respect of the said land bearing Survey No.21, Hissa No.21 and the proceeding under Section 32-g of the B.T. & A.L. Act was started. However, the said proceeding was decided against the defendant no.1. All these things were carried out behind the back of the

plaintiffs as per the provisions of B.T.& A.L Act. by managing the said proceeding. When the plaintiffs came to know about the same, they preferred an appeal and the said order was cancelled. Thus it is clear that, defendant no.1 had tried to enter the said suit property falsely in his name as owner, hence the plaintiffs came with the contention that they want possession of the suit property from the defendant no.1 and hence filed the suit against the defendant no.1 for possession of the suit property.

. The defendant no.1 challenged the suit denying the allegations raised by the plaintiffs. According to his case he had no idea as on today, whether Mahamad Mulla had purchased the property in the year 1930 and that even prior to the said sale deed he was in possession thereof. The defendant nos.2 to 4 had no right, title and interest in the suit property after the death of Mahamad Mulla. According to him, property bearing Grampanchayat No.279 is constructed by him by spending his own amount with full knowledge of the plaintiffs and defendant nos.2 to 4 about 30 to 35 years ago and as such he was owner of the suit property. On such other grounds the suit was sought to be dismissed

with costs.

3. The learned trial judge adjudicated the dispute on merits. It was held on the basis of available evidence that the plaintiffs had proved that the suit property was owned by Mahamad Mulla and they had subsisting title to the said house and land on which the house stood. It was further held that the plaintiffs had proved that defendant no.1 had taken the land on lease from Ahmad Mahamad Yusuf under the lease for shop. However, the plaintiffs were non suited only on the ground that the notice contemplated under Section 111(g) of the Transfer of Property Act was not issued for determining the lease of the defendant. Consequently the suit came to be dismissed for want of statutory notice.

4. The appeal was preferred to the District Court, Ratnagiri. The learned District Judge after hearing both the parties came to the conclusion that the plaintiffs succeed in establishing the ownership title to the suit property as well as the fact that the defendant no.1 was lessee in the suit property and it was not established by defendant no.1 that he had

constructed the suit house about 30 years prior to the suit. It was further held that no notice contemplated under Section 111(g) was required to be issued to determine the tenancy, as the act of disclaimer on the part of the defendant no.1 as title of the plaintiffs was sufficient to determine the lease under the law and as on such and other grounds the appeal was allowed and suit was decreed in toto.

5. I heard the learned counsel for both the parties. Perused the entire evidence on record.

6. It is to be noted that at the time of admission of the appeal the substantial question of law was raised to the effect that "whether the filing of an application by a tenant for purchase under the Tenancy Act would amount to disclaimer of title of the landlord".

. The small but subtle question involved in this appeal is "whether the act on the part of the defendant no.1 which definitely would amount to disclaimer of title would be sufficient to act as waiver of notice as contemplated under section 111(g) of Transfer of Property Act." In order to determine the issue at hand

it would be necessary to make reference to the provision of Section 111(g) of Transfer of Property Act, which reads thus -

"111. Determination of lease - A lease of immoveable property determines --

(a)

(b)

(c)

(d)

(e)

(f)

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-entry [***]; or (2) in case the lessee renounces his character as such by

setting up a title in a third person or by claiming title in himself; [or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in [any of these cases] the lessor or his transferee [gives notice in writing to the lessee of] his intention to determine the lease;"

Therefore, it is to be seen that in case the lessee renounces his character as such by setting up a title in a third person or by claiming title himself, the lease would be forfeiture as contemplated by the said provision. For that purpose the provision further shows that lessor may re-enter on the happening of such event and the lessor or his transferee would give notice in writing to the lessee of his intention to determine the lease.

. The learned trial judge came to the conclusion that there was no written notice issued by the plaintiffs to the defendant no.1 and therefore, the plaintiffs had no right to seek shelter of Section 111(g) of the Act to determine the lease by forfeiture.

The learned appellate court judge while reversing the findings come to the conclusion that the act of disclaimer on behalf of defendant no.1 of title of plaintiffs was sufficient to show that there was constructive notice and no further notice was required. In support of this aspect the learned appellate court judge put reliance on the judgment of this court in the case of Vidyavardhak Sangh Company vs. Ayyappa Sanirimallappa and Ors reported in A.I.R. 1925 Bombay 524. Perusal of this judgement shows that it was held by Division Bench of this Court that a disclaimer of the Lessor's title by the annual tenant of a holding to which Sec.84 applies, is, if made prior to suit, a sufficient cause of action to enable the lessor to recover possession without proof of notice to quit. In the present case, before us, it is seen from the record that not only the defendant no.1 had expressed his intention to disclaim the title of the plaintiffs but in fact he acted in that manner by obtaining entries in his name as owner of the property in Revenue as well as Grampanchayat record and thereby does not dispute that he claimed property as his own property. If this was the position prior to the suit, then in my considered view there would be sufficient cause of action to enable

the lessor to file the suit without proof of formal notice to quit, as observed by the Division Bench of this Court in the aforesaid ruling.

. Similarly, the learned counsel for the respondents also put reliance on the case of **Amar Singh vs. Hoshiar Singh** reported in **A.I.R. (39) 1952 Allahabad 141** wherein it was observed that when the tenant denied title in the earlier suit and thereafter the landlord had intimated that he required the premises for personal use and therefore, institution of suit was held to be sufficient to intimate intention to determination of lease and notice of termination was held to be not necessary. This ruling also would apply to the present case.

7. The learned counsel for the appellant sought to put reliance on the Supreme Court ruling in the case of **Raja Mohammad Amir Ahmad Khan vs. Municipal Board of Sitapur and anr.** reported in **AIR 1965 Supreme Court 1923**. The apex court has observed that mere statement made by a person to claim heritable interest in land to the effect that the land belonged to him would not amount to denial of landlord's title. In my view this

ruling would not be applicable to the present case, as it is not a case of mere statement of ownership regarding the suit property, but further overtact in getting the name entered not only in the Revenue record but also Grampanchayat record as an owner of the property while fully knowing the fact that he was mere lessee in the property and property was owned by plaintiffs and the defendant nos.2 to 4. This aspect, in my view, amounts to disclaimer of title of the plaintiffs and hence such conduct of the defendant no.1 clarifies his intention to grab the property behind the back of the plaintiffs. When the plaintiffs came to know about this fact, thereafter they filed the suit and thus complying the ratio of AIR 1925 Bombay page 524 the legal position is abundantly clear to the fact that no formal notice is required to defendant no.1 of determining the tenancy of filing the suit. For the reasons recorded by the lower appellate court, I am in full agreement with the lower appellate court judge while he had concluded that the plaintiffs' suit deserve to be decreed. Under the circumstances I do not intend to interfere with the order passed by the lower appellate court judge and confirmed the same.

. In the result the appeal stands dismissed.
Under the circumstances no order as to costs.

. Interim order passed pending the appeal stands
vacated.

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